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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
Federal Communications Commission
Washington D.C. 20554

In the Matter of)	
)	
Application for Full Commission Review)	
of a Common Carrier Bureau Decision)	
Rendered Under Delegated Authority.)	DA No. 02-83
)	
Henrico County Public Schools)	File No. SLD-209024
Richmond, Virginia)	
)	
Federal-State Joint Board on)	
Universal Service)	CC Docket No. 96-45
)	
)	
Changes to the Board of Directors of the)	
National Exchange Carrier Association)	CC Docket No. 97-21

Application for Review of Delegated Authority Decision

Funding Year Two Form 471 Application Number Nec.471.03-29-00.30800040
Entity Number: 126514
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In accordance with 47 CFR 1.115 (Application for review of action taken pursuant to delegated authority), Henrico County Public Schools, Richmond, Virginia requests full Commission review of a Common Carrier Bureau (CCB) decision denying Henrico's appeal of an administrator's decision in the Universal Service (E-Rate) support mechanism. We ask Commission review of this decision under the authority of 47 CFR 1.115 (b)(2) (iv), an erroneous finding by the CCB as to an important or material question of fact. Based on the arguments presented below, we ask the commission to overturn the CCB decision and remand the application here under appeal to the Schools and Libraries Division (SLD) for further processing.

Background

Henrico County schools submitted a Form 471, application number NEC.471.03-29-00.30800040, for Universal Service (E-Rate) discounts for Year Two to the Schools and Libraries Division on March 29, 2000. In its filing, Henrico cited Form 470, Number

1.115 (b)(2) (iv)
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952970000283996, a Funding Year 3 Form 470 as the basis for the underlying contract listed in the Form 471 now before the Commission. The Form 470 was posted to the SLD's web site on December 20, 1999. The Schools and Libraries Division denied funding for this application on July 17, 2000. Henrico County appealed the SLD decision to the CCB on August 16, 2000. On January 14, 2002 the CCB denied Henrico's appeal.

Important Material Question of Fact

In rendering its decision at paragraph 5, the CCB rejected out of hand the notion that a Form 470 posted under the heading of "Year Three" could be used as a "Year Two" posting for out-of-window application purposes. This rejection was in error, as it was quite impossible to post a Year Two Form 470 on December 20, 1999. In its decision, the CCB neglected to consider this fact.

Under the Schools and Libraries Universal, E-Rate, Support Mechanism eligible schools and libraries must comply with the FCC's competitive bidding requirements under 47 C.F.R. § 54.504 (b)(1), (b)(3), (b)(4). Specifically, regulations under (b)(3) state that: "The Administrator shall post each FCC Form 470 that it receives from an eligible school, library, or consortium that includes an eligible school or library on its website designated for this purpose." Section (b)(3) requires the Form 470 to be posted for at least four weeks before an eligible school or library may enter into a contract for services. After the posting requirement has been met and the eligible applicant has complied with all applicable state and local procurement regulations, the eligible applicant may enter into a binding contract for services.

After signing contracts for eligible goods and services, applicants may request discounts on those goods and services by filing a Form 471 with the administrator. Forms 471 usually must be submitted during designated "filing windows" established by the SLD; however, in Year Two, applicant demand for goods and services was such that all successful Form 471 applications filed prior to March 31, 2000 would be funded.

Henrico had been advised by the Virginia Department of Education in an email dated November 18, 1999, that there appeared to be sufficient funds available for Year Two applications filed outside the Year Two window and applicants should submit requests as soon as possible. In December 1999 Henrico issued a public bid for certain E-Rate eligible equipment and filed a Form 470 with the administrator. At the time Henrico filed the Form 470 to notify potential vendors of the bid it was impossible to post a Year Two Form 470 to the SLD web site. As noted in Henrico's August 16 appeal to the CCB, "...we did not have the opportunity to file a 470 form for the 1999-2000 Year..." as the Year Two Form 470 posting option had been disabled on the administrator's Web site, in violation of FCC regulations.

For an unknown reason between mid October 1999 and mid February 2001, the SLD shut down the Year Two Form 470 Web site for new applications. The SLD closed the Year Two Form 470 filing site even though funding year two was only three months old, and there was mounting evidence that sufficient funds were available to satisfy all E-Rate applications in and outside the Year Two filing window.

The CCB was made aware of the Year Two Form 470 Web site shutdown, although the CCB did not acknowledge this fact in the Henrico decision. Petitions for Review filed by the Virginia Department of Education on March 14, 2000, and November 17, 2000 in support of outstanding appeals outlined the Web site shutdown. Those appeals are available on the Internet at the following addresses:

http://gulfoss2.fcc.gov/prod/ccfs/retrieve.cgi?native_or_pdf=pdf&id_document=6010957565.

http://gulfoss2.fcc.gov/prod/ccfs/retrieve.cgi?native_or_pdf=pdf&id_document=6512158748

Additionally, Mr. Greg Weisiger of the Virginia Department of Education met with Mr. Mark Seifert, CCB and reviewer of the Henrico decision, in December 2000 to discuss the issue of the SLD failure to post year two Forms 470 in general, and the Henrico situation in particular.

In a separate decision issued on January 17, 2002, denying the above March 14, 2000 Virginia Department of Education Petition (DA 02-138), the CCB acknowledged at paragraph 4 that the Form 470 Year Two Web site was not available to applicants during November, December 1999, and January 2000:

On October 25, 1999, prior to the opening of the Second Window, SLD switched to an application operating system for Funding Year 3. As a result, parties who filed FCC Form 470s requesting Funding Year 2 services on or after October 25, 1999, were forced to use the Funding Year 3 application system to do so. Thus, although the FCC Form 470s requested services in Funding Year 2, SLD posted them on its web site together with the Funding Year 3 FCC Form 470s.¹ To address this problem, SLD posted a list of the Applications Numbers of those Funding Year 2 FCC Form 470s that were received by SLD on or after October 25, 1999 in a separate location on its web site.² Vendors interested in providing service during the Second Window were instructed to review the list to identify Second Window FCC Form 470 application numbers on which they might be interested in bidding. Vendors were further notified that, to enter a bid for Second Window applications, they would need to enter Funding Year 3 from the drop-down box labeled "7/1/2000 - 6/30/2001" to access the FCC Form 470 and review the details. SLD delayed the posting of some FCC Form 470s while this solution was being developed and implemented. The FCC Form 470s at issue in this matter were filed during this interim period.

¹ See SLD web site, What's New (March, 2000),
<<http://www.sl.universalservice.org/whatsnew/032000.asp#consideryr2>>.

² See SLD web site, What's New (March, 2000),
<<http://www.sl.universalservice.org/whatsnew/032000.asp#updates>>.

Even with this acknowledgment, the CCB failed to point out that the special information for vendors was not posted until March 2000, long after Henrico issued its bid for services. Additionally, the Year Two Forms 470, initially posted to the Year Three Web site and relocated to the Year Two site in March 2000, were wholly inadequate for evaluation by vendors, containing only minimum information about applicant needs. However, the overriding fact remains that the Year Two Form 470 web site did not post ANY Forms 470 during December 2000 – the time Henrico issued its bid. A Year Three posting was the ONLY alternative for applicants to post Forms 470 during that time period.

When issuing a bid for services, Henrico complied with all state and local procurement laws, and considered any responses from potential vendors that may have seen the Web posting. Henrico believes its Form 470 and Form 471 filings for Year Two services comply with both the spirit and letter of Universal Service, E-Rate regulations.

Finally, as a practical matter revealed in a March 1, 2000 posting by the SLD on the “What’s New” section of the SLD Web site, SLD announced that it would consider Year Two applications filed outside the designated filing window. In the announcement, SLD indicated that it would process those applications AFTER completing processing of all Year Three applications: “We expect that we will complete our review of in-the-window Year 3 applications by late May 2000. Depending on the volume of additional applications for Year 2 we receive, we hope to be able to make commitments on post-window Year 2 applications before the end of July.” In reality, out-of-window Year Two Form 471 applications were processed well into the summer and fall of 2000, making commitments for one-time charges and internal connections de facto Year Three commitments. The Henrico application on appeal was entirely for discounts on internal connections.

Conclusion

Based on the evidence presented here, we ask the Commission to remand Henrico’s Year Two out-of-window application to SLD for further processing and allow the Year Three Form 470, properly posted on the SLD Web site during Year Two, to be the basis of Henrico’s ultimate contract for services.

Respectfully Submitted,

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